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Introductory Note: United Nations Revised Rules on Treatment of Prisoners

Kasey McCall-Smith¹
University of Edinburgh

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Introduction

The United Nations General Assembly unanimously adopted the Revised Standard Minimum Rules for the Treatment of Prisoners on December 17, 2015.² To honor the late South African President Nelson Mandela's well-documented struggle against human rights abuse under the South African apartheid regime and his lifelong dedication to the promotion of equality and human dignity, the rules are known as the 'Mandela Rules'.³ The Mandela Rules expand those adopted in 1955 by the First UN Congress on the prevention of Crime and the Treatment of Offenders.⁴ In the intervening years, related international instruments have outlined the minimum standards of treatment for specific categories of individuals in detention.⁵ The revised rules benefit from five years of consultation by the Expert Group⁶ across UN Member States, criminal justice experts, the UN Office on Drugs and Crime, the World Health Organization and many other States, international organizations and NGOs. The updates clarify that minimum standards require not only multi-layer consideration of the detained individual, but also an in-depth consideration of those employed in any form in relation to the treatment of those deprived of their liberty.

The Mandela Rules synthesize a range of international laws that are relevant to ensuring the inherent dignity of all imprisoned individuals and reflect key human rights and criminal justice standards that have developed since the original minimum rules were adopted. These include the International Covenant on Civil and Political Rights (ICCPR),⁷ the Convention on the Elimination of all Forms of Discrimination against Women,⁸ the Convention on the Rights of the Child,⁹ the Convention against Torture and other Cruel, Inhuman or Degrading Treatment,¹⁰ as well as Common Article 3 of the Geneva Conventions.¹¹ They also reflect contemporary understandings of data management, the potential rehabilitative opportunities and mental health care in prisons, which track ongoing debates across the international community. Furthermore, the rules include deliberate recognition of customary rules of international law, including the prohibition against slavery, as well as laws of consular or diplomatic access.¹²

Human Dignity as the Common Thread

The consistent thread that weaves its way through the Mandela Rules is that human dignity must be at the core of all considerations. From intake and search procedures to health and well-being programs to transfer of individuals, human dignity must be protected. As suggested above, the Mandela Rules reiterate many rules of law that are common parlance among lawyers, domestic and international alike. The prohibition against torture or other cruel, inhuman or degrading treatment appears seven times across the document and is long-recognized as a *jus cogens* norm and key to the protection of human dignity.¹³ The increased attention to the prohibition against torture suggests that consultations with the UN High Commissioner for Human Rights, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the International Committee for the Red Cross were compelling. The substance of the changes and reinforcement of human dignity and the prohibition against torture can be tracked across six broad

considerations: holistic health and well-being; disciplinary procedures; in-custody complaints and investigations; legal representation; protection of vulnerable prisoners; and, appropriate staff selection and training.

Holistic approach to health and well-being

There is a strong emphasis on holistic care for individuals using an inter-disciplinary medical team, including attention to both physical and mental health concerns and efforts to rehabilitate. These additions track contemporary human rights and criminal justice discourse as well as confirm that it is the state's responsibility to deliver comprehensive health and well-being services to incarcerated individuals.¹⁴ The role of human dignity in various forms of punishment is overtly linked to physical and mental health in the revised rules.

Disciplinary Procedures

A complete recapitulation of the guidance on the range of issues relating to discipline and sanctions are grounded in ensuring human dignity and proportionality. The use of restraint instruments, prohibition of family contact, corporal punishment, food or water manipulations and prolonged solitary confinement as disciplinary measures are highlighted as practices that expressly violate human dignity and, in most instances, the prohibition against torture. In particular, the parameters of permissible solitary confinement are neatly fixed and leave no room for misinterpretation. These parameters set a baseline that often has been violated in recent history, thus the express articulation of the practice and its juxtaposition against both human dignity and health is a clear illustration of the various ways in which solitary confinement can breach a *jus cogens* norm.

In-custody Complaints and Investigations

Concomitant with the duty of an expeditious investigation into disciplinary offences by prisoners is the prompt consideration of prisoner complaints against those who are responsible for his or her treatment. In particular, several cross-references consider the relationship between complaints, investigations and respect for human dignity. The prohibition against torture is firmly reiterated in terms of investigations whether or not a complaint has been raised.¹⁵

Legal Representation

Closely associated with issues regarding complaints and investigations while in custody is a prisoner's ability to access legal information and representation. The basic right to legal representation encompasses not only formal legal proceedings but also investigations into prisoner or staff misconduct. This reinforces civil and political rights expressed in the ICCPR. This aspect of the revised rules is particularly compelling when considering the protection of vulnerable individuals.

Protection of Vulnerable Individuals and Groups

Another key change is the acknowledgement that the Mandela Rules should apply equally to men and women and at all times follow the principle of non-discrimination, including a positive consideration of self-perceived gender.¹⁶ Concern over balancing dignity in the event of body searches and the rights or preferences of LGBT individuals has already been flagged as a concern.¹⁷ Other related international instruments have outlined the minimum standards of treatment for specific categories of individuals in detention, such as the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules'), and the Mandela Rules are intended to be read in concert with other guidance instruments, including international human rights treaties.¹⁸ Essential to the

protection of all vulnerable individuals is appropriate data management and comprehensive health care, key features reinforced in the updated rules.

Appropriate Selection and Training

The onus placed on prison professionals to uphold the Mandela Rules is inherently tied to ‘their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends’¹⁹ and recognizes both the positive and negative roles that could be played by those who supervise persons deprived of their liberty. The rules reiterate throughout that training is key to a cohesive prisoner/prison staff environment. This includes ensuring that all staff working with vulnerable individuals receive specific training related to any specialized duties, whether they serve in a supervisory capacity (prison guards) or an incidental service provider (medical professionals).

Going forward with the Mandela Rules

Though not a legally enforceable document, the Mandela Rules confirm an array of binding norms observed across UN Member States. They underscore the basic tenets of decency that should permeate all aspects of the treatment of individuals deprived of their liberty. Recent history dictates a need for a stark reminder of both internationally recognized norms and binding international obligations, particular the prohibition against torture and the principle of non-discrimination.

The rules have already been discussed in a range of international fora with input from States on the potential for both best practice and implementation difficulties. Unsurprisingly, technical aspects of data management, adequate healthcare and appropriate training of staff in terms of dealing with vulnerable individuals, including the disabled, have already been raised as issues of concern due to budgetary constraints in low-income economies.²⁰ While some measure of budgetary constraint complaints should be anticipated, the international community must work together to ensure that constraints do not impact unnecessarily on the vulnerable or enable standard-cutting in relation to training. It is only by ensuring non-discrimination through the support of vulnerable groups and effective training to prevent ill-treatment of prisoners that the Mandela Rules will herald a tide change against capricious treatment of prisoners. Going forward in the current turbulent geopolitical landscape, the Mandela Rules will serve as concise guide to States and their penal agencies and should be lauded for the ultimate goal of setting a baseline for the appropriate minimum standards for prisoner treatment across the globe. It is hoped that the words of Mandela himself will ring true as universal implementation is achieved: “It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

¹ Lecturer in Public International Law, University of Edinburgh. Comments to kasey.mccall-smith@ed.ac.uk.

² G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (Dec. 17, 2015).

³ *Id.* ¶ 6.

⁴ The rules were approved by the U.N. Economic and Social Council, ECOSOC Res. 663 C (XXIV) (July 31, 1957) and ECOSOC Res. 2076 (LXII) (May 13, 1977).

⁵ See, for example, UN Rules for the Protection of Juveniles Deprived of their Liberty. G.A. Res. 45/113, U.N. Doc. A/RES/45/113 (Dec. 14, 1990); UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, G.A. Res. 65/229, U.N. Doc. A/RES/65/229 (Mar. 16, 2011); Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, O.A.S. Doc. OEA/Ser/L/V/II.131 doc. 26 (Mar. 3-14, 2008).

⁶ G.A. res. 65/230, U.N. Doc. A/RES/65/230 (Dec. 2, 2010).

⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

⁸ Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Dec. 18, 1979, 1249 U.N.T.S. 13.

⁹ UN Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹⁰ UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment, Dec. 10, 1984, 1465 U.N.T.S. 85.

¹¹ Common Article 3 of the following: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field Aug. 12, 1949, 75 U.N.T.S. 31 (Geneva Convention I); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85 (Geneva Convention II); Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135 (Geneva Convention III); Geneva Convention Relative to the Protection of Civilian Persons in Time of War Aug. 12, 1949, 75 U.N.T.S. 287 (Geneva Convention IV). Collectively known as the 'Geneva Conventions'.

¹² Rule Nos. 97 (prohibition of slavery) and 62 (consular/diplomatic access), *supra* note 1.

¹³ Preamble¶ 6, Rule Nos. 1, 8d, 32d, 34, 43, 71, 76b *supra* note 1. 'Prohibition against torture' will be used collectively to refer to lesser included treatment throughout this note. On the prohibition of torture as a rule of *jus cogens*, see, for example, Juan E. Méndez, Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, Open Letter to the Chair of the 24th Session of the UN Commission on Crime Prevention and Criminal Justice (May 18, 2015).

¹⁴ Rule No. 24.1, *supra* note 1.

¹⁵ Rule No. 71, *supra* note 1.

¹⁶ Rule No. 7a, *supra* note 1.

¹⁷ See, for example, Summary of Discussions, Penal Reform International and Thailand Institute of Justice: The Southeast Asia Regional Consultation on the Implementation of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (Aug. 8-9, 2016), https://cdn.penalreform.org/wp-content/uploads/2016/09/Summary-of-discussions_Mandela-Rules-SEA-Regional-consultation-August2016-1.pdf.

¹⁸ *Supra* note 4.

¹⁹ Rule No. 74, *supra* note 1.

²⁰ Summary of Discussions, *supra* note 16.